IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B. RADHAKRISHNAN

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

WP(C).No. 23122 of 2007(C)

OA.1292/1998 of DEBT RECOVERY TRIBUNAL, ERNAKULAM
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PETITIONER:

C.V.VIJAYACHANDRAN, AGED 60 YEARS,
S/O.LATE KELAPPAN, 'KARTHIKA', KALVAKULAM ROAD,
KOPPAM P.O., PALAKKAD.

BY ADV. SRI.P.VIJAYA BHANU
SRI.M.GEORGE THOMAS

RESPONDENTS:
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1. R.RAGHAVAN, S/O.K.BAGHYAM,
NO.B, II UNIT, M/S.C.S.AGENCIES, IOB COLONY,
MARUTHAMALA, COIMBATORE.

2. THE BRANCH MANAGER,
INDIAN BANK, THORAPALAYAM,
PALAKKAD.

3. THE RECOVERY OFFICER,
DEBT RECOVERY TRIBUNAL, 8TH FLOOR,
K.S.H.B. BUILDING, PANAMPILLY NAGAR,
KOCHI.

4. SANTHOSH.C.D., S/O.DAMODARAN,
CHERAKKULAM HOUSE, IRINJALAKUDA NORTH,
THRISSUR DISTRICT.

R2 BY ADV. SRI.S.EASWARAN
R4 BY ADV. SRI.T.MADHU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE AGREEMENT FOR SALE EXECUTED BETWEEN THE FIRST RESPONDENT AND THE PETITIONER IN FEBRUARY 1996

EXT.P2 TRUE COPY OF THE CLAIM PETITION I.A. NO. 100/04 IN D.R.C. NO. 20/1/PKD DATED 29.3.2004

EXT.P3 TRUE COPY OF THE PROCLAMATION OF SALE DATED 12.12.2006 IN DCR NO. 20/1B/PKD

EXT.P4 TRUE COPY OF THE ORDER OF CONFIRMATION OF SALE DATED 28.5.2007 IN DRC NO. 20 IN I.A.NO. 1292 OF 1998

EXT.P5 TRUE COPY OF THE NSOTICE DATED 13.7.2007 ISSUED TO THE PETITIONER HEREIN BY THE THIRD RESPONDENT.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

THOTTATHIL B. RADHAKRISHNAN, J.

W.P.C. NO. 23122 OF 2007

Dated this the 4th day of October, 2007

JUDGMENT

The first respondent is the debtor of the second respondent-Bank. Since the debts remained undischarged, the Bank moved the Debts Recovery Tribunal. This resulted in a recovery certificate. Proceedings were initiated on the basis of that certificate. Different items of properties covered by mortgages were brought to sale. One of the items was purchased by the fourth respondent. Thereafter, the petitioner held out Ext.P1, on alleged agreement for sale, and filed a claim petition before the Recovery Officer. It appears that the petitioner did not appear and the claim petition was dismissed for non-prosecution, as is evident from paragraphs 4 and 5 of Ext.P5. The sale was confirmed and sale certificate was issued to the fourth respondent.

2. On the basis of the aforesaid undisputed facts premise, this writ petition is filed seeking to quash the recovery proceedings and for a mandamus to restore the claim petition to file.

3. Being a writ petition, I deem it appropriate to weigh the rights of the parties to ascertain whether any relief needs to be granted in this writ petition.

4. As already noticed, the petitioner's claim is on the basis of an alleged agreement for sale. Ext.P1 is the document. Without going into the veracity, sustainability, as also the terms thereof, it can be easily noticed that even in that document, shown to have been made in February, 1996, the vendor had notified the petitioner, the vendee, regarding the fact that the property was mortgaged to the Bank for business loan and all documents are with that Bank. If the recitals of Ext.P1 are to be followed, the petitioner was authorised to clear that loan to the extent of balance sale consideration. The petitioner does not have even a case that, that has been done. Even if that were, that could not bind the Bank. Now, on to the question of equitable consideration, if at all it survives, it has to be noticed that even after more than a decade, the petitioner has not shown that he had taken any action

whatsoever to enforce that agreement and obtain title to the property. The quality of possession on the strength of an agreement for sale does not confer any right to title. That apart, a transferee or a proposed vendee, with an agreement for sale in his favour of an item of property covered by prior mortgage, does not have a right to contend that notice of any sale proceedings was not given to him in relation to hypotheca. This, as pointed out by learned counsel appearing for the 4th respondent, is covered by the unreported judgment of this Court, in W.P.(C) No. 36869 of 2004, dated 30.3.2006. For the aforesaid reasons, I am satisfied that the petitioner has no justiciable right to sustain, even if the claim petition is considered on merits.

Under such circumstances, the writ petition fails and is hence dismissed. No costs.

(THOTTATHIL B. RADHAKRISHNAN)
Judge

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